

State of New Mexico
Children, Youth & Families
and
The Regents of the University of New Mexico

Information Technology Agreement
13-690-14804

THIS Information Technology Agreement (“Agreement” or “Contract”) is made by and between the State of New Mexico, Children, Youth & Families Department (CYFD), hereinafter referred to as the “Procuring Agency” and **The Regents of the University of New Mexico**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties”.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq*; and Procurement Code Regulations, NMAC 1.4.1 *et.seq*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A. “Acceptance” or “Accepted” shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the Procuring Agency.
- B. “Application Deployment Package” shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.
- C. “Business Days” shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.
- D. “Change Request” shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.
- E. “Chief Information Officer (“CIO”)” shall mean the Cabinet Secretary/CIO of the Department of Information Technology for the State of New Mexico or Designated Representative.
- F. “Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the Procuring Agency or any other State agency as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the

Procuring Agency or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or maintained by the Procuring Agency, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.

- G. "Contract Manager" shall mean a Qualified person from the Procuring Agency responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be Jesse Leinfelder or his/her Designated Representative.
- H. "Default" or "Breach" shall mean a violation of this Agreement by either failing to perform one's own contractual obligations or by interfering with another Party's performance of its obligations.
- I. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- J. "Designated Representative" shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.
- K. "DoIT" shall mean the Department of Information Technology.
- L. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration, Contracts Review Bureau.
- M. "Escrow" shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the Procuring Agency receives the legal document, in this case, Source Code.
- N. "Enhancement" means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.
- O. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives or his/her Designated Representative.
- P. "GRT" shall mean New Mexico gross receipts tax.
- Q. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- R. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a Project and the Project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Procuring Agency.
- S. "Know How" shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- T. "Payment Invoice" shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the Procuring Agency. Payment

Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.

- U. "Performance Bond" shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.
- V. "Project" shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the Executive Level Representative and verified by the Procuring Agency CIO to the DoIT. If applicable, under the terms of this Agreement the Project is.
- W. "Project Manager" shall mean a Qualified person from the Procuring Agency responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be Jesse Leinfelder or his/her Designated Representative.
- X. "Qualified" means demonstrated experience performing activities and tasks with Projects.
- Y. "Quality Assurance" shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.
- Z. "Services" shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.
- AA. "State Purchasing Agent (SPA)" shall mean the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.
- BB. "State Purchasing Division (SPD)" shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.
- CC. "Software" shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.
- DD. "Software Maintenance" shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.
- EE. "Source Code" shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.
- FF. "Turnover Plan" means the written plan developed by the Contractor and approved by the Procuring Agency in the event that the work described in this Agreement transfers to another vendor or the Procuring Agency.

ARTICLE 2 – SCOPE OF WORK

- A. Scope of Work. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.
- B. Performance Measures. The Contractor shall substantially perform to the satisfaction of the Procuring Agency the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the Procuring Agency may provide written notice to the Contractor of the Default and specify a reasonable period of

time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6 or Article 16.

C. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit A, which due dates shall not be altered or waived by the Procuring Agency without prior written approval, through the Amendment process, as defined in Article 25.

D. License.

Not Applicable. The Parties agree there is no License.

E. Source Code. Not Applicable. The Parties agree there is no Source Code.

F. The Procuring Agency's Rights.

1. Rights to Software. The Procuring Agency will own all right, title, and interest in and to the Procuring Agency's Confidential Information, and the Deliverables, provided by the Contractor, including without limitation the specifications, the work plan, and the Custom Software, except that the Deliverables will not include third party software and the associated documentation for purposes of this Section. The Contractor will take all actions necessary and transfer ownership of the Deliverables to the Procuring Agency, without limitation, the Custom Software and associated Documentation on Final Acceptance or as otherwise provided in this Agreement.
2. Proprietary Rights. The Contractor will reproduce and include the State of New Mexico's copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.
3. Rights to Data. Any and all Procuring Agency data stored on the Contractor's servers or within the Contractors custody, in order to execute this Agreement, is the sole property of the Procuring Agency. The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the Procuring Agency's data in any manner, or provide to any entity or person outside of the Procuring Agency without the express written authorization of the Procuring Agency.

ARTICLE 3 - COMPENSATION

A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A.

B. Payment. The total compensation under this Agreement shall not exceed **\$363,500.00** excluding NMGRT. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is

responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than thirty (30) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

Invoices shall be sent to:

Jesse Leinfelder
Manager, Federal Home Visiting Program
Children, Youth and Families Department
1120 Paseo de Peralta
Room 111
Santa Fe, NM 87501

Payment shall be sent to:

Contract and Grant Accounting Office
MSC01 1245
The University of New Mexico
Albuquerque, NM 87131-0001

- C. Taxes. Not Applicable - contract is between two public entities.
- D. Retainage. Not Applicable – The Parties agree there is no retainage.
- E. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond

ARTICLE 4 – ACCEPTANCE

- A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Procuring Agency. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A.
- B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative,

in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:

- 1.) Complies with the Deliverable requirements as defined in Article 2 and Exhibit A
- 2.) Meets the performance measures for the Deliverable(s) and this Agreement;
- 3.) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
- 4.) Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or designee, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within fifteen (15) business days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection. Unless the Executive Level Representative gives notice of rejection within the fifteen (15) day business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) business days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor may also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor may be deemed as in breach of this Agreement. The Procuring Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT.

This Agreement shall terminate on **June 30, 2013**, unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall not exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

- A. General. By the either Party upon written notice to be delivered to the other party not less than ten (10) Business Days prior to the intended date of termination.
- B. Appropriations. By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.
- C. Obligations and Waiver. By termination pursuant to this Article, neither Party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE PROCURING AGENCY AND THE STATE OF NEW MEXICO CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

ARTICLE 7 – TERMINATION MANAGEMENT

- A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
 1. Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Procuring Agency;
 2. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the Procuring Agency;
 3. Terminate all cancelable purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
 4. Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
 5. Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;

6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency's programs;
7. In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction;

B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall:

1. Retain ownership of all work products and documentation created pursuant to this Agreement; and
2. Pay the Contractor all amounts due for Services Accepted and any non-cancelable expenses prior to the effective date of such termination or expiration.

ARTICLE 8 – INDEMNIFICATION

Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq. NMSA 1978, as amended.

ARTICLE 9 – INTELLECTUAL PROPERTY

Ownership. Not Applicable. The Parties agree there is no Intellectual Property.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq. NMSA 1978, as amended.

ARTICLE 11 - CERTIFICATIONS

A. General. The Contractor hereby certifies the Deliverables as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This certification encompasses correction of defective Deliverables and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

Contractor makes no warranties or representations, express or implied, either in fact or by operation of law, statutory or otherwise, including but not limited to warranties of merchantability or fitness for a particular purpose, non-infringement of third party rights, except those set forth in this agreement. Unless specified in this agreement, all express or implied conditions, representations and warrantied, including any implied warranty of merchantability, fitness for a particular purpose, or non-infringement, are hereby disclaimed.

B. Software. Not Applicable. The Parties agree there is no Software.

ARTICLE 12 – CONTRACTOR PERSONNEL

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

Pam Sellers

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

ARTICLE 13 – STATUS OF CONTRACTOR

A. Independent Contractor. Not Applicable – Agreement is between two public entities.

B. Subject of Proceedings. Contractor certifies that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any

such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

ARTICLE 14 - CHANGE MANAGEMENT

A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change under this article may only be made to Tasks or Sub-Task as defined in the Exhibit A. Changes to the below listed shall only be made by Amendment per Article 25.

1. Deliverable requirements, as outlined in Exhibit A;
2. Due date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 6.

B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

1. The Project Manager shall draft a written Change Request for review and approval by the Executive Level Representative to include:
 - (a) the name of the person requesting the change;
 - (b) a summary of the required change;
 - (c) the start date for the change;
 - (d) the reason and necessity for change;
 - (e) the elements to be altered; and
 - (f) the impact of the change.
2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

Not Applicable – The Parties agree there is no IV&V.

ARTICLE 16 – DEFAULT/BREACH

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and may also seek all other remedies under the terms of this Agreement and under law or equity.

ARTICLE 17 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement may cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure may be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's seeking from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement may be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 18 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement, subject to New Mexico law. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the Procuring Agency to any equipment or its installation or for losses caused by the Procuring Agency's fault or negligence. Any liability incurred by a governmental agency in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq.

ARTICLE 19 – ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement's approval authorities.

ARTICLE 20 – SUBCONTRACTING

- A. General Provision. The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Procuring Agency.
- B. Responsibility for subcontractors. The Contractor must not disclose Confidential Information of the Procuring Agency or of the State of New Mexico to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement.

ARTICLE 21 – RELEASE

The Contractor's Acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

ARTICLE 22 – CONFIDENTIALITY

Any confidential information provided to the contractor clearly marked as confidential by the agency or, developed by the Contractor based on information provided by the agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the Procuring Agency within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the Procuring Agency may result in direct, special and incidental damages.

ARTICLE 23 –CONFLICT OF INTEREST

The Contractor certifies that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 24 - RECORDS AND AUDIT

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of Services rendered during this Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, CIO, SPA, and DFA and the New Mexico State Auditor's Office. The Procuring Agency shall have the right to audit billings both before and after payment. Payment for Services under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

ARTICLE 25 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities. Amendments are required for the following:

1. Deliverable requirements, as outlined in Exhibit A;
2. Due Date of any Deliverable, as outlined in Exhibit A;

3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement Compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 6.

ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

Not Applicable

ARTICLE 27 – NEW MEXICO EMPLOYEES PAY EQUITY REPORTING

Not Applicable

ARTICLE 28 – MERGER, SCOPE, ORDER OF PRECEDENCE

- A. **Severable.** The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.
- B. **Merger/Scope/Order.** This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 29 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

For PROCURING AGENCY
Michelle Randall
Children, Youth and Families Department
PERA Building Room 101
1120 Paseo De Peralta
Santa Fe, NM 87501
505-827-4039

For CONTRACTOR

Timothy Wester, Contract and Grant Administrator
PreAward Services, Main
1700 Lomas NE, Suite 2200, MSC01 1247
Albuquerque, NM 87131-0001
(505) 277-1287
twester@unm.edu

Any change to the Notice individual or the address, shall be effective only in writing.

ARTICLE 30 – GENERAL PROVISIONS

- A. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, including but not limited to:
 - 1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
 - 2. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
 - 3. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.
- B. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.
- C. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict

compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

D. **Headings.** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

ARTICLE 31 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement for a period of three (3) years.

ARTICLE 32 - TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 33 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

ARTICLE 34 – BACKGROUND CHECKS

CYFD contractors that have or could have primary custody of children for at least twenty hours per week are required to comply with NMAC 8.8.3 et. seq. requiring background checks on any employee, staff, volunteer or student intern, that has direct care responsibilities or potential unsupervised physical access to clients. The contractor must submit to CYFD Background Check Unit fingerprint cards and the appropriate fee for such employees, volunteers or staff required to have background checks. CYFD Background Check Unit will conduct nationwide,

state and abuse and neglect background checks on required staff or volunteers in accordance with NMAC 8.8.3 standards. A CYFD eligibility letter must be in the employee, volunteer or staff member's personnel file prior to that individual having any unsupervised direct contact or unsupervised potential access to clients.

ARTICLE 35 – HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.

The Contractor agrees to comply with the Health Insurance Portability and Accountability Act of 1996, and the terms in **Attachment 3**, which is attached and incorporated by reference.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: P. Kelly Galon Date: 8/28/12
 Children, Youth and Families Department

By: Michael D. Schwantes Date: 8-25-12
 Michael D. Schwantes, Director Financial Systems and Restricted Accounting
 Regents of the University of New Mexico 37924

By: Darryl Ackley Date: 8-28-12
 Chief Information Officer
 Children, Youth & Families Department

Approved for legal sufficiency:

By: John C. Sandoval Date: 8/17/12
 General Counsel
 Children, Youth and Families Department

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

CRS ID Number: N/A

By: N/A Date:
 Taxation & Revenue Department

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Laws 2007, Chapter 290 and any and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico:

By: Darryl Ackley Date: 7 SEP 12
 Darryl Ackley, Secretary and State CIO
 Department of Information Technology

This Agreement has been approved by the DFA Contracts Review Bureau:

By: N/A Date:
 DFA Contracts Review Bureau

EXHIBIT A – SCOPE OF WORK

**University of New Mexico
Continuing Education**

- I. Purpose of the agreement:
 - To maintain the home visiting data management system for all CYFD's contracted home visiting programs;
 - To provide training for staff of home visiting programs contracted with CYFD on use of the data management system, including accurate documentation and continuous program quality improvement;
 - To provide analysis of the collected data to assist the state in determining the outputs and effectiveness of the CYFD home visiting program;
 - To maintain clear accountability for the Health Resources and Services Administration and the state CYFD funding streams
- II. Performance Measures
 - Maintain the home visiting data management system with accurate and complete data.
 - Provide reports tracking the required demographics and activities towards achievement of the federal Maternal Infant Early Childhood Home Visiting (MIECHV) program's six Benchmark areas and 35 constructs, by CYFD contracted home visiting provider agencies, as specified by the CYFD application to MIECHV.
 - Provide reports tracking the required demographics and activities towards achievement of the state-defined five Long-term Outcomes, by CYFD contracted home visiting provider agencies.
- III. Activities
 - The contractor shall complete the activities included in the following Deliverables, including:
 - i. Maintenance of an accurate and complete database of home visiting program activities
 - ii. Training of users
 - iii. Provision of reports

I. Deliverables

The following sections describe the required tasks and subtasks to be performed by the Contractor for each Deliverable under the terms of this Agreement. The Contractor must perform each task and/or subtask, but is not limited to performing only the identified task or sub tasks in a given project area. The Parties hereby agree that the Deliverable(s) are the controlling items and that the Contractor's obligation is to perform and deliver the Deliverable as described in the following sections.

A. **Deliverable Number 1: Maintain the home visiting data management system for all CYFD's home visiting programs**

Deliverable One	Due Date	Compensation
Maintain the home visiting data management system for all CYFD's home visiting programs	Monthly through June 30, 2013	Total compensation= \$68,359.00
	NM Home Visiting	Home Visiting Expansion
\$2,119.50 per month. Not to exceed \$25,434.00		\$3,577.08 per month. Not to exceed \$42,925.00
Task Item	Sub Tasks	
System design	Sub 1	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Maintain and make regular updates and improvements to the data management system for CYFD's aligned (original and expansion) home visiting programs. • Operate a ListServ for CYFD management and contracted agencies. • Implement a statewide home visiting program registry of all providers regardless of funding/oversight. Information includes program name and location, service capacity, model/approach used, and other areas as identified by the Procuring Agency.
Responsive system management	Sub 2	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Submit requests for revisions to the data management system from CYFD Home Visiting programs (outside of regular maintenance) to the CYFD Home Visiting Manager. Requests shall be submitted in writing to the Procuring Agency for review and acceptance using CYFD's Change Order form and include time/cost estimates for the proposed work. Elective revisions may incur costs to the specific contracted home visiting provider.
Maintain data security	Sub 3	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Maintain security, with password protection and carefully delineated access using the security standards as approved by CYFD ITS. • Ensure data for each specific contracted provider can only be viewed by that program's personnel and CYFD managers as approved in advance. • Provide a list of any non-CYFD home visiting provider personnel who have access to the data base including level of access and reason for access to the CYFD Home Visiting Program Manager. Update as necessary. • Ensure that access to electronic records comply with ePHI and HIPAA as required by CYFD.
Maintain system	Sub 4	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Purchase, repair and update software and UNM hardware as needed to maintain all functions of the data management system.

Communication with other data management systems	Sub 5		The Contractor will: • Communicate with other data management systems, specifically the Efforts To Outcomes (ETO) system of Nurse Family Partnership.
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B. Deliverable Number 2 Training and technical assistance support

Deliverable Two	Due Date	Compensation
Training and technical assistance support	Monthly through June 30, 2013	Total compensation= \$89,994.00
	NM Home Visiting	Home Visiting Expansion
	\$3,008.33 per month. Not to exceed \$36,100.00	\$4,491.17 per month. Not to exceed \$53,894.00
Provide training and technical assistance support to users	Sub 1	The Contractor will: • Technical assistance may be provided on-site, telephonically, via the web, via email. • Users must be (re)trained when there are significant revisions to the data management system. • Train managers of programs contracted with CYFD to provide home visiting services to use reports to monitor staff activities and client status, and for continuous quality improvement • Promote use of the workforce data collection screens by participating programs providing CYFD-funded home visiting services.
Support of users	Sub 2	The Contractor will: • Participate in monthly Ask the Manager conference calls with the CYFD managers and all contracted home visiting providers to answer questions and provide direction. • Attend Quarterly Home Visiting Meetings. • Monitor data for completeness and accuracy, and work with users when data is inaccurate or incomplete • Support individual programs to document in a format approved by the Procuring Agency and monitor client information and activities of the home visiting staff.

C. Deliverable Number 3: Reports and analysis of data

<u>Deliverable Three</u>	<u>Due Date</u>	<u>Compensation</u>
Provide reports and analysis	Monthly through June 30, 2013	Total compensation = \$83,401.00
	NM Home Visiting	Home Visiting Expansion
	\$1,853.50 per month. Not to exceed \$22,242.00	\$5096.58 per month. Not to exceed \$61,159.00
Identify and analyze data needed to meet standards for evidenced based practice in the Home Visiting field	Sub 1	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Track activities towards the CYFD-defined 5 Long-Term Outcomes* <p>The Contractor will:</p> <ul style="list-style-type: none"> • Provide analysis as requested by CYFD, such as links (if any) between maternal prenatal care and infant birth weights, or child status on the Ages and Stages Questionnaire (ASQ) related to length of time parent participated in the program, as well as maternal depression.
Develop and implement a plan for outcomes evaluation	Sub 2	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Develop and implement a plan that includes ways to evaluate the efficacy for families and children of the NM home visiting system standards of service, and overall for all models being used including Parents As Teachers and Nurse Family Partnership. Efficacy includes determining how the CYFD's 5 Long Term Outcomes* and the MIECHV 6 Benchmarks** are being achieved.

Produce reports	Sub 3	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Produce reports for contracted providers using specific models, to meet the requirements of the New Mexico Home Visiting Standards of Service and submit to the Procuring Agency for review and acceptance. 	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Produce reports for contracted providers using specific models, to meet the requirements of the model, specifically Parents As Teachers and Nurse Family Partnership. • Produce reports to the Maternal Infant Early Childhood Home Visiting (MIECHV) program, in the format and on the timeline required. Reports must track required demographics and activities towards the Maternal Infant Early Childhood Home Visiting (MIECHV) program 35 Constructs with the 6 Benchmark areas** • Produce reports for MIECHV and individual contracted agencies providing home visiting services [Parents As Teachers (PAT), Nurse Family Partnership (NFP), and First Born].
		<p>The Contractor will:</p> <ul style="list-style-type: none"> • Prepare regular reports as defined by CYFD. Such reports are to provide the CYFD upper management with data about numbers served, length of participation, referrals completed, ages of children served, etc. Reports should discriminate among clients with lengthy terms of participation and clients who did not stay with the services. • Generate quarterly reports with data documenting activities to support CYFD's 5 Long Term Outcomes*, both aggregated and separately by program. • Provide visually-appealing reports on elements such as the percentage of clients who did or did not receive pre-natal care; babies born at normal or low birth weight; referrals made and successfully completed. • Produce an annual home visiting workforce report that presents an accurate picture of the education levels of the workforce. 	
Public Information Requests	Sub 3	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Route requests for reports by persons other than CYFD contracted home visiting providers, including Public Information Act requests, to the CYFD Home Visiting Program Manager. • Submit such reports to the CYFD Home Visiting Program Manager for approval prior to release. 	

D. Deliverable Number 4: Purchase of licensing/lease software and customization

Deliverable Four	Due Date	Compensation	
Software license and support	Monthly through June 30, 2013	Total compensation= \$78,429.00	
	NM Home Visiting	Home Visiting Expansion	
	\$3,483.33 per month. Not to exceed \$41,800	\$3,052.42 per month. Not to exceed \$36,629	
Purchase licenses for software (Symserve)	Sub 1	The Contractor will: <ul style="list-style-type: none"> • Contract with SymServe for licensing/lease for the <i>R/Client Children</i> software. 	
Customization and TA for home visiting data management system.	Sub 2	The Contractor will: <ul style="list-style-type: none"> • Contract with Symserve to customize and provide technical assistance on the data management system to fit the needs of the NM Home Visiting program in areas including required fields, drop-down menus, and reports, and to meet the specific needs of New Mexico's home visiting model Standards of Service. 	The Contractor will: <ul style="list-style-type: none"> • Contract with Symserve to customize and provide technical assistance on the data management system to meet specific needs of home visiting models, including Nurse Family Partnership, Parents As Teachers.
Support coordination of all NM home visiting programs with the goal of achieving one aligned system in NM			<ul style="list-style-type: none"> • Prepare a recruitment and pricing packet, working with SymServe, for use promoting the home visiting data management system to other home visiting programs outside the state and federal CYFD network, with the goal of supporting one coordinated statewide home visiting system. The packet shall be submitted to the Procuring Agency for review and acceptance. The materials must also include sample MOU's specifying ownership of data, and possible consent for sharing of de-identified data for statewide cross-agency/cross-model reporting.

E. Deliverable Number 5: Administration of agreement and program support

Deliverable Five	Due Date	Compensation
Administration of agreement and program support	Monthly through June 30, 2013	Total compensation= \$43,317.00
	NM Home Visiting	Home Visiting Expansion
	\$1,493.67 per month. Not to exceed \$17,924.00	\$2,116.17 per month. Not to exceed \$25,393.00
Administer agreement and support of program	Sub 1 The Contractor will: <ul style="list-style-type: none"> • Work with Procuring Agency's Program Manager to administer Agreement. • Submit invoices on a monthly basis to Procuring Agency's Program Manager for review and acceptance. • Train, supervise, and evaluate performance of UNM-CE project staff. • Attend meetings as required. • Submit in advance subcontracts with 3rd party vendors over \$1,000 for approval by the CYFD Home Visiting Program Manager. • Ensure that where CYFD materials are used in training and handouts, the Procuring Agency receives proper credit and the CYFD logo is prominently displayed. • Support program monitoring of both the original and expansion programs. • Provide quarterly reports specific to each contracted provider with numbers of clients and numbers of home visits completed, screens completed, referrals made, and other data as determined by the CYFD Home Visiting Program Manager, in a format approved by the Procuring Agency. • Participate in on-site monitoring visits conducted by CYFD home visiting personnel. • Submit quarterly reports to Procuring Agency outlining successes and challenges, in a mutually-agreed upon format, for the Procuring Agency review and acceptance. Reports are due by the 15th of October, January, and April, with a summary report due June 30, 2013. Reports will be inclusive of both original and expansion managed data sets. 	

*State 5 Long-Term Outcomes:

Babies are born healthy, Children are nurtured by their parents and caregivers, Children are physically and mentally healthy and ready for school, Children and families are safe, Families are connected to formal and informal supports in their communities.

** Maternal Infant Early Childhood Home Visiting (MIECHV) 6 Benchmark areas:
 Improved Maternal and Newborn Health; Child Injuries, Abuse, Neglect, Maltreatment, ER Visits; School Readiness; Domestic Violence; Family Economic Self-Sufficiency; Coordination and Referrals for Other Community Supports.

Attachment 3 – Business Associate Agreement

This is a business associate agreement in compliance with 45 CFR Section 160.504(e)(2) of the HIPAA privacy rule. Contractor understands that it may be considered a business associate of the Department under the HIPAA Privacy and Security Rules. Accordingly, the parties agree:

- The disclosures the Department will make to Contractor of any information that identifies an individual and includes information about the individual's health (protected health information), whether in electronic or physical form, shall be limited to the minimum reasonably necessary for Contractor's delivery of services described in the Scope of Agreement to which the parties have agreed to in the Contract.
- Any disclosures by Contractor of the individual's protected health information inconsistent with this agreement are strictly prohibited and shall be cause for termination of the Contract. Contractor shall take all reasonable steps to avoid such disclosures, including but not limited to implementation of all practical administrative, physical and technical safeguards.
- After the expiration of this Contract, whether because a party has cancelled it, it is fully executed or for any other cause, Contractor shall return all documents containing the individual's protected health information to the Department. Contractor also agrees that it shall take reasonable affirmative precautions to avoid any unauthorized disclosures of protected health information to third parties.
- Contractor understands it is responsible for reporting unauthorized disclosures, including but not limited to electronic security violations, to the Department's privacy office or the federal Office of Civil Rights. Contractor also understands it is responsible for reporting any other disclosure for purposes other than treatment, payment or operations to the Department's privacy office.
- Contractor agrees to bind their agents and subcontractors to the terms of this agreement.
- Contractor understands an individual has the right to inspect and request changes to the protected health information the parties use or create and that an appropriate privacy officer or the federal Office of Civil Rights has the authority to inspect the parties' procedures for management of the individual's protected health information.